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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,314	12/11/2001	David Allen Loewenstein	FERN-P008	2903
7590		08/23/2006	EXAMINER	
David A. Loewenstein		RADA, ALEX P		
802 King Street		ART UNIT		
Rye Brook, NY 10573		PAPER NUMBER		
		3712		

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<i>Communication Re: Appeal</i>	Application No.	Applicant(s)	
	10/015,314	LOEWENSTEIN, DAVID ALLEN	
	Examiner	Art Unit	
	Alex P. Rada	3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:
- (a) ☐ it was not timely filed.
 - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) ☐ the appeal fee received on _____ was not timely filed.
 - (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.
2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:
- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) ☒ other: 37 CFR 41.37(d) states, "If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief
 - (e) which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed". Appellant submitted a defective Brief on 06 September 2005. On 16 May 2006, Examiner provided a Notice of Defective Appeal outlining the defects in Appellant's Brief. On 16 June 2006, Appellant submitted a Supplemental Appeal Brief that failed to correct all of the defects of the previous Brief. Specifically, Appellant included arguments in the "Issues on Appeal" section. Therefore, Appellant's appeal stands dismissed as a matter of law. Note that this is not a matter of Examiner discretion. Appellant's appeal is dismissed as a matter of law, and since the appeal is dismissed, it does not constitute a proper reply to the Final Rejection of 03 May 2005. Since the time for filing a proper response has expired, the case is abandoned.

4. ☒ Because of the dismissal of the appeal, this application:
- (a) ☒ is abandoned because there are no allowed claims.
 - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) ☐ is before the examiner for consideration.

JOHN M. HOTALING, II
PRIMARY EXAMINER